

Item W06-04 Response Form

Title: **Juvenile Law: Procedure Before Removal of Child From Prospective Adoptive Parents** (adopt Cal. Rules of Court, rules 1463.1, 1463.3, and 1463.5; adopt forms JV-160, JV-321, JV-322, JV-323, JV-324, JV-326, and JV-327)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **if modified**
- ☐ **Do not agree** with proposed changes

Comments: _____

Name: _____ Title: _____

Organization: _____

☐ **Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Romunda Price,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Romunda Price
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Monday, January 23, 2006
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council
or the Rules and Projects Committee
All comments will become part of the public record of the council's action.*

Invitation to Comment W06-04

Title	Juvenile Law: Procedure Before Removal of Child From Prospective Adoptive Parents (adopt Cal. Rules of Court, rules 1463.1, 1463.3, and 1463.5; adopt forms JV-160, JV-321, JV-322, JV-323, JV-324, JV-326, and JV-327)
Summary	The proposed new rules and forms would implement Welfare and Institutions Code section 366.26(n), which requires notice and, if requested, a hearing before a dependent child can be removed from the home of a prospective adoptive parent.
Source	Family and Juvenile Law Advisory Committee Hon. Jerilyn L. Borack and Hon. Susan D. Huguenor, Co-chairs
Staff	Kerry Doyle, 415-865-8791, kerry.doyle@jud.ca.gov
Discussion	<p>Senate Bill 218 (Scott; Stats. 2005, ch. 626) added subdivision (n) to Welfare and Institutions Code section 366.26. The subdivision was enacted to provide judicial oversight of the removal of a dependent child from his or her caregiver's home if the caregiver is a prospective adoptive parent.</p> <p>SB 218 establishes a notice-and-hearing procedure before removal. The bill defines the term "prospective adoptive parent," requires notice of a request to remove a child from a prospective adoptive parent's home, and requires a hearing on the agency's request for removal if objections to the removal are raised. The bill has several procedural omissions: the designation procedure; whether or not the designation can be terminated; type, manner, and form of notice; and standards of proof.</p> <p>The proposed rules and forms provide procedures, timelines, notice requirements, and standards where the bill is silent.</p> <p>Welfare and Institutions Code section 366.26(j) provides that, if the court declares a child free from parental custody and control, the court must simultaneously order the child referred to the Department of Social Services (DSS) or a licensed adoption agency for adoptive placement. The subdivision also entitles DSS or a licensed adoption agency to exclusive care and control of the child until a petition for adoption is granted. Appellate courts have held that placement decisions by DSS or an agency that take place after termination of</p>

parental rights are reviewable only for abuse of discretion or if the agency's recommendation is "patently absurd or unquestionably not in the child's best interest."¹

SB 218 does not affect the provision that gives DSS or an adoption agency exclusive care and control of the child. It does, however, recognize that removal from a caregiver's home may not be in the child's best interest, and establishes a procedure for notice and hearing prior to any removal from a prospective adoptive parent.

Prospective Adoptive Parent Designation

SB 218 allows a caregiver to apply for designation as a prospective adoptive parent. The bill does not provide procedural guidance for such a request. The needed procedure for the court to make the designation is provided by proposed rule 1463.1; form JV-321, *Request for Prospective Adoptive Parent Designation*; and form JV-322, *Order on Request for Prospective Adoptive Parent Designation*.

While the definition of a prospective adoptive parent is clearly specified in SB 218, the Family and Juvenile Law Advisory Committee believes that the rule should follow de facto parent case law and authorize the court to deny a request for designation as a prospective adoptive parent if the court has previously found that the applicant has abused, neglected, or otherwise acted to the detriment of the child. Proposed rule 1463.1 includes this caveat.

SB 218 is also silent regarding any procedure to terminate the prospective adoptive parent designation. The Family and Juvenile Law Advisory Committee believes the designation should not be a permanent one. A caregiver may initially express a commitment to adopt a child, but not follow through on the adoption process. In such a case, designation as a prospective adoptive parent may no longer be accurate. Proposed rule 1463.1 would allow a request to vacate an order designating a caregiver as a prospective adoptive parent pursuant to Welfare and Institutions Code section 388. This process would give the court the discretion to terminate the prospective adoptive parent designation if the caregiver no longer meets the definition and the court finds that terminating that designation is in the child's best interest. The proposed rule will provide a consistent statewide

¹ *In re Theodore D.* (1997) 58 Cal.App.4th 721, 724–725, 733–734; *In re Harry N.* (2001) 93 Cal.App.4th 1378.

procedure for courts to terminate the prospective adoptive parent designation.

Notice

SB 218 requires the DSS or agency to notify the court, the designated or qualified prospective adoptive parent,² the child's attorney, and the child, if the child is 10 years of age or older when DSS or the agency proposes to remove the child from the caregiver's home. Notice must be given as soon as possible after a decision to change the child's placement is made. The bill provides that notice shall be in the manner described in Welfare and Institutions Code section 16010.6. That section, however, does not provide guidance about the form of notice, nor does it provide for notice to the current caregiver or court, as required by the bill. The analyses of SB 218 by both the Senate and Assembly Committees on the Judiciary indicate that this notice should be given in the manner in which all notices are given in dependency proceedings ((Sen. Com. on Judiciary, Analysis of Sen. Bill 218 (2004–2005 Reg. Sess.); Assem. Com on Judiciary, Analysis of Sen. Bill 218 (2004–2005 Reg. Sess.) as amended April 21, 2005)). Different dependency proceedings, however, have different notice requirements. Status review hearings, for example, are required to be noticed by mail, whereas the initial, or detention, hearing is required to be noticed by telephone or in person.

If notice of a proposed removal is provided by mail, Code of Civil Procedure section 1013 would apply. This section extends any period of notice and any duty to make any response by a minimum of five calendar days. Thus, the time to respond and request a hearing would be extended. Proposed rule 1463.3 and proposed form JV-323, *Request to Remove Child and Proof of Notice*, provide the procedure for notice of a proposed removal. Proposed rule 1463.3(d) would allow service by mail of the agency's request to remove a child.

SB 218 permits a child, a child's attorney, or a caregiver who is a designated or qualified prospective adoptive parent to file a petition with the court objecting to the proposed removal of the child from the caregiver's home, or the court may on its own motion set a hearing. The bill requires the court to set any hearing on a proposed removal

² If the current caregiver would have fit the statutory definition of a prospective adoptive parent on the date the adoption agency served notice of a proposed change of placement, SB 218 requires that notice be provided to the caregiver.

not later than five court days after the request for hearing is filed. If the request for hearing was served by mail, Code of Civil Procedure section 1013 extends the period of notice by a minimum of five calendar days. Thus, the date on which notice is deemed received and the date of the hearing could be the same date. For this reason, proposed rule 1463.3(f) allows for telephone notice of a hearing on a proposed removal. Telephone notice makes it possible for courts to comply with the bill's mandate that the removal hearing be held not later than five court days after the request for hearing is filed with the court.

The Family and Juvenile Law Advisory Committee considered possibilities regarding who should have the duty of providing notice. Options included requiring the clerk of the court to provide notice and requiring the agency requesting removal to provide notice. Workload concerns arose about both of these options. Another option is to have the party requesting the hearing provide notice; this caused concern, since caregivers and children are unlikely to have the necessary procedural knowledge.

The proposed rule takes a "hybrid" approach. It would require the child's attorney to provide notice if the child's attorney requests the hearing. The clerk would be required to give notice of a hearing requested by another participant. The committee's intention is to ensure proper notice and somewhat reduce the burden this new procedure places on court clerks.

While SB 218 requires that notice of a request to remove a child be provided to the court, the child's caregiver, the child's attorney, and the child, if the child is 10 years of age or older, it does not provide for notice to two important groups: the child's identified Indian tribe and the child's Court Appointed Special Advocate (CASA) volunteer. Proposed rule 1463.3 includes notice to these two additional participants.

The federal Indian Child Welfare Act ("the act") and the California Rules of Court require that, whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive placement, or adoptive placement, such placement be in accordance with the act. (Cal. Rules of Court, rule 1439(o).) The act also provides that no foster care placement proceeding may be held until at least 10 days after receipt of notice by the tribe. Notice to the child's identified tribe of the agency's decision to remove a child and

make a new placement is therefore required.

Due to the important role a dependent child's CASA volunteer plays in the child's life, CASA volunteers are entitled to notice of all hearings under the California Rules of Court. (Cal. Rules of Court, rules 1460–1463, 1466, 1496). Given the potentially life-changing importance of a requested removal from the child's home, the CASA volunteer should receive notice of the agency's request to remove the child, as they receive notice of other important court events regarding the child.

SB 218 allows emergency removals without prior notice if the child is at risk of physical or emotional harm. The bill provides timelines and standards for a hearing on such an emergency removal. Proposed rule 1463.5 and proposed form JV-160, *Notice of Emergency Removal From Prospective Adoptive Parent*, provide the procedure for notice of an emergency removal as well as for notice of a court hearing on the emergency removal. Proposed rule 1463.5 allows for telephone notice of the emergency removal.

Burden of Proof

SB 218 is silent about the burden of proof for the hearing on removal. Bill analyses, however, indicate that the legislative intent was to place on the agency requesting removal the burden of proving that the proposed move is in the child's best interest (Sen. Com. on Judiciary, Analysis of Sen. Bill 218 (2004–2005 Reg. Sess.). Evidence Code section 115 establishes that, except as otherwise provided by the law, the burden of proof requires proof by a preponderance of the evidence. Proposed rules 1463.3 and 1463.5 clarify that the agency must show by a preponderance of the evidence that the proposed removal is in the best interest of the child.

The text of the proposed rules is attached at pages 6–13.

The text of the proposed forms is attached at pages 14–26.

The relevant portions of SB 218 and Welfare and Institutions Code section 16010.6 are attached at pages 27–32.

Attachments

Rules 1463.1, 1463.3, 1463.5 of the California Rules of Court would be adopted, effective July 1, 2006, to read:

Rule 1463.1. Prospective adoptive parent designation (§ 366.26(n))

(a) [Request procedure] A dependent child's caregiver may be designated as a prospective adoptive parent. The court may make the designation on its own motion or upon a request by a caregiver, the child, a social worker, Court Appointed Special Advocate (CASA) local program, or an attorney.

(1) A request for designation as a prospective adoptive parent may be made at a hearing under section 366.26 or anytime thereafter, whether or not the child's removal from the home is at issue.

(2) A request may be made orally.

(3) If a request for prospective adoptive parent designation is made in writing, it must be made on form JV-321, *Request for Prospective Adoptive Parent Designation*.

(4) The address and telephone number of the caregiver and the child may be kept confidential by filing form JV-327, *Confidential Information (Prospective Adoptive Parents)*, with form JV-321. Form JV-327 must be kept in the court file under seal, and only the court and the child's attorney may have access to this information.

(b) [Definition of prospective adoptive parent] A caregiver must meet the following criteria to be designated as a prospective adoptive parent:

(1) The child has lived with the caregiver for at least six months;

(2) The caregiver currently expresses a commitment to adopt the child; and

(3) The caregiver has taken at least one step to facilitate the adoption process. Steps to facilitate the adoption process include but are not limited to:

(A) Applying for an adoption home study;

(B) Cooperating with an adoption home study;

(C) Being designated by the court or the licensed adoption agency as the adoptive family;

1 (D) Requesting de facto parent status;

2
3 (E) Signing an adoptive placement agreement;

4
5 (F) Discussing a postadoption contact agreement with the social worker,
6 child's attorney, child's CASA volunteer, adoption agency, or court;

7
8 (G) Working to overcome any impediments that have been identified by
9 the California Department of Social Services and the licensed
10 adoption agency; and

11
12 (H) Attending any of the classes required of prospective adoptive
13 parents.

14
15 **(c) [Hearing on request for prospective adoptive parent designation]** The court
16 must evaluate whether the caregiver meets the definition of prospective
17 adoptive parent in (b).

18
19 (1) If the court finds that the caregiver meets the definition of prospective
20 adoptive parent in (b), the court may grant the request for designation
21 without a hearing.

22
23 (2) If the court finds that the caregiver does not fit the definition of
24 prospective adoptive parent in (b) the court may deny the request without
25 a hearing.

26
27 (3) If the court made a finding before the designation hearing that the
28 applicant has abused, neglected, or otherwise acted to the detriment of the
29 child, the court may deny the request without a hearing.

30
31 (4) If all parties stipulate to the request for designation of the caregiver as a
32 prospective adoptive parent, the court may order the designation without a
33 hearing.

34
35 (5) If it appears to the court that the request for designation as a prospective
36 adoptive parent will be contested or if the court wants to receive further
37 evidence on the request, the court must set the hearing as follows:

38
39 (A) If the request for designation is made at the same time as an
40 objection to removal, the court must order that the designation
41 hearing be set at a time before the hearing on the removal.
42

1 (B) If the request for designation is made before a request for removal is
2 filed or an emergency removal has occurred, the court must order
3 that the hearing be set at a time within 30 calendar days after the
4 filing of the request for designation.
5

6 **(e) [Notice of designation hearing]** After the court has ordered a hearing on a
7 request for prospective adoptive parent designation, notice of the hearing must
8 be as follows:
9

10 (1) If the request for designation was made at the same time as a request for
11 hearing on a proposed or emergency removal, notice of the designation
12 hearing must be provided with notice of the proposed removal hearing, as
13 set forth in rule 1463.3.
14

15 (2) If the request for designation was made before a request for removal was
16 filed or before an emergency removal occurred, notice must be as follows:
17

18 (A) The court's order for a hearing on form JV-321, *Request for*
19 *Prospective Adoptive Parent Designation* and form JV-322, *Order*
20 *on Request for Prospective Adoptive Parent Designation*, must be
21 used together to notice a hearing on the request for prospective
22 adoptive parent designation.
23

24 (B) If the caregiver filed form JV-321, the clerk must serve notice of the
25 hearing on the agency, the caregiver, the child's attorney, and the
26 child if 10 years of age or older. Proof of service must be filed with
27 the court prior to the hearing on request for prospective adoptive
28 parent designation.
29

30 (C) If the child's attorney filed form JV-321, the child's attorney must
31 serve notice of the hearing on the agency, the caregiver, and the
32 child if 10 years of age or older. Proof of service must be filed with
33 the court prior to the hearing on request for prospective adoptive
34 parent designation.
35

36 (D) Service of the notice must be either by first class mail sent to the last
37 known address of the person to be noticed, or by personal service on
38 the person at least 10 calendar days before the hearing.
39

40 **(f) [Termination of designation]** If the prospective adoptive parent no longer
41 meets the definition in rule 1463.1(b), a request to vacate the order
42 designating the caregiver as a prospective adoptive parent may be filed
43 pursuant to Welfare and Institutions Code section 388.

1
2 (g) [Filing] Filing of documents under this rule must be as follows:

3
4 (1) The court may not charge a filing fee for forms.

5
6 (2) If the telephone or address of the caregiver or the child is confidential, all
7 forms must be kept in the court file under seal. Only the court and the
8 child's attorney may have access to this information.
9

10 **Rule 1463.3. Proposed removal (§ 366.26(n))**

11
12 (a) [Application of rule] This rule applies to the removal by the Department of
13 Social Services or licensed adoption agency of a dependent child from a
14 prospective adoptive parent or from a caregiver who may fit the definition of a
15 prospective adoptive parent. This rule does not apply if the child's removal is
16 carried out at the request of the caregiver.
17

18 (b) [Participants to be noticed] Before removing a child from the home of a
19 prospective adoptive parent or from the home of a caregiver who would fit the
20 definition of a prospective adoptive parent, and as soon as possible after a
21 decision is made to remove the child, the agency must notify the following
22 participants of the proposed removal:
23

24 (1) The court;

25
26 (2) The current caregiver, if that caregiver either is a designated prospective
27 adoptive parent or, on the date of service of the notice, meets the
28 definition in 1463.1(b);
29

30 (3) The child's attorney;

31
32 (4) The child, if the child is 10 years of age or older;
33

34 (5) The child's identified Indian tribe; and

35
36 (6) The child's identified Court Appointed Special Advocate (CASA) local
37 program.
38

39 (c) [Form of notice] The agency must provide notice on form JV-323, *Request to*
40 *Remove Child and Proof of Notice.* The agency must also serve a blank form
41 *JV-324, Objection to Removal, Notice of Hearing Date, and Proof of Service*
42 *with form JV-323.*
43

1 (d) [Service of notice] The agency must serve notice of a request to remove a
2 child as follows:

3
4 (1) The agency may serve notice either by first-class mail, sent to the last
5 known address of the person to be noticed, or by personal service.

6
7 (2) Service is completed and time to respond is extended as set forth in Code
8 of Civil Procedure section 1013.

9
10 (3) Proof of service of the notice must be filed with the court.

11
12 (e) [Objection to proposed removal] The caregiver, the child's attorney, the
13 child if 10 years of age or older, and the child's identified Indian tribe may
14 object to the request to remove the child and may request a hearing. Such a
15 request must be made on form JV-324, *Objection to Removal, Notice of*
16 *Hearing Date, and Proof of Service.*

17
18 (f) [Notice of proposed removal hearing] After the court has ordered a hearing
19 on a request to remove a child, notice of the hearing must be as follows:

20
21 (1) Notice may be given by personal service or by telephone. Telephone
22 notice must include the reasons for and against the removal, as indicated
23 on forms JV-323 and JV-324.

24
25 (2) If the court, caregiver, or child is requesting a hearing, the clerk must
26 provide notice of the hearing to the agency, the caregiver, the child's
27 attorney, the child if 10 years of age or older, the child's identified Indian
28 tribe, and the child's CASA local program. Proof of service must be filed
29 with the court before the hearing on the request to remove the child.

30
31 (3) If the child's attorney is requesting a hearing, the attorney must provide
32 notice of the hearing to the agency, the caregiver, the child if 10 years of
33 age or older, the child's identified Indian tribe, and the child's CASA
34 local program. Proof of service must be filed with the court before the
35 hearing on the request to remove the child.

36
37 (4) If notice is made by personal service, the court's order for a hearing on
38 form JV-324, *Objection to Removal, Notice of Hearing Date, and Proof*
39 *of Service* must be used.

40
41 (g) [Burden of proof] At a hearing on a request to remove child, the agency
42 requesting removal of the child must prove by a preponderance of the evidence
43 that the proposed move is in the best interest of the child.

1 (h) [Filing] Filing of documents under this rule must be as follows:

2
3 (1) The court may not charge a filing fee for forms.

4
5 (2) If the telephone or address of the caregiver or the child is confidential, all
6 forms must be kept in the court file under seal. Only the court and the
7 child's attorney may have access to this information.
8
9

10 **Rule 1463.5. Emergency removal (§ 366.26(n))**

11
12 (a) [Application of rule] This rule applies to the removal by the Department of
13 Social Services or licensed adoption agency of a dependent child from a
14 prospective adoptive parent or a caregiver who may fit the definition of a
15 prospective adoptive parent. This rule does not apply if the child's removal is
16 done at the request of the caregiver.
17

18 (b) [Participants to be noticed] After removing a child from the home of a
19 prospective adoptive parent, or from the home of a caregiver who would fit
20 the definition of a prospective adoptive parent, because of immediate risk of
21 physical or emotional harm, the agency must notify the following participants
22 of the emergency removal:
23

24 (1) The court;

25
26 (2) The current caregiver, if that caregiver either is a designated prospective
27 adoptive parent or, on the date of service of the notice, meets the
28 definition in rule 1463.1(b);
29

30 (3) The child's attorney;

31
32 (4) The child, if the child is 10 years of age or older;
33

34 (5) The child's identified Indian tribe; and

35
36 (6) The child's identified Court Appointed Special Advocate (CASA) local
37 program.
38

39 (c) [Form of notice] The agency must provide notice of the emergency removal as
40 soon as possible but no later than two court days after the removal.
41

42 (1) Notice to the caregiver and to the child if 10 years of age or older, must be
43 on form JV-160, *Notice of Emergency Removal*. The agency also must

1 serve the caregiver and the child 10 years of age or older with a blank
2 form JV-324, *Objection to Removal, Notice of Hearing Date, and Proof*
3 *of Service*. Whenever possible, the agency must provide form JV-324 to
4 the caregiver and the child 10 years of age or older at the time of the
5 removal.

6
7 (2) Notice to the child's attorney, the child's identified Indian tribe, and the
8 child's identified CASA local program may be by personal service of
9 form JV-160, *Notice of Emergency Removal From a Prospective Adoptive*
10 *Parent*, or by telephone. The telephone notice must include the reasons
11 for removal.

12
13 (3) Notice to the court must be by filing of form JV-160, *Notice of*
14 *Emergency Removal From a Prospective Adoptive Parent*, with the court.
15 The proof of service included on form JV-160 must be completed when
16 the form is filed with the court.

17
18 **(d) [Objection to emergency removal]** The caregiver, the child's attorney, the
19 child if 10 years of age or older, and the child's identified Indian tribe may
20 object to the emergency removal and request a hearing. This request must be
21 made on form JV-324, *Objection to Removal, Notice of Hearing Date, and*
22 *Proof of Service*.

23
24 **(e) [Notice of emergency removal hearing]** After the court has ordered a hearing
25 on an emergency removal, notice of the hearing must be as follows:

26
27 (1) The court's order for a hearing on an emergency removal on form JV-324,
28 *Objection to Removal, Notice of Hearing Date, and Proof of Service* must
29 be used.

30
31 (2) Notice of an emergency removal hearing may be by personal service or
32 by telephone. The telephone notice must include the reasons for and
33 against the removal, as indicated on forms JV-160 and JV-323.

34
35 (3) If the court, the caregiver, or the child is requesting a hearing, the clerk
36 must provide notice of the hearing to the agency, the caregiver, the child's
37 attorney, the child if 10 years of age or older, the child's identified Indian
38 tribe, and the child's CASA local program. Proof of service must be filed
39 with the court before the hearing on the emergency removal.

40
41 (4) If the child's attorney is requesting a hearing, the attorney must provide
42 notice of the hearing to the agency, the caregiver, the child if 10 years of
43 age or older, the child's identified Indian tribe, and the child's identified

1 CASA local program. Proof of service must be filed with the court before
2 the hearing on the emergency removal.

3
4 **(f) [Burden of proof]** At a hearing on an emergency removal, the agency
5 requesting removal of the child must prove by a preponderance of the evidence
6 that the removal is in the best interest of the child.

7
8 **(g) [Filing]** Filing of documents under this rule must be as follows:

9
10 (1) The court may not charge a filing fee.

11
12 (2) If the telephone or address of the caregiver or the child is confidential, all
13 forms must be kept in the court file under seal. Only the court and the
14 child's attorney may have access to this information.
15
16

**Notice of Emergency Removal From
a Prospective Adoptive Parent**

Clerk stamps date here when form is filed.

This notice must be served with a blank copy of form JV-324, Objection to Removal, Notice of Hearing Date, and Proof of Notice.

**DRAFT 16
12/15/05 xyz
Not approved by the
Judicial Council**

Fill in court name and street address:

Superior Court of California, County of

Clerk fills in case number when form is filed.

Case Number:

1 To:

Court: _____

Designated prospective adoptive parent or caregiver who may fit the
definition of "prospective adoptive parent" (name): _____

Child's attorney (name): _____

Child, if 10 years of age or older (name): _____

Child's identified Indian tribe, if applicable (name): _____

Child's Court Appointed Special Advocate (CASA), if applicable (name): _____

2 The adoption agency (name of agency): _____ has
removed (name of child): _____ from his or her current home because of an immediate
risk of harm (explain): _____

3 *If you do not agree with the removal, you may request a court hearing by filling out form JV-324, Objection to Removal, Notice of Hearing Date, and Proof of Notice. You must fill out form JV-324 and file it with the court within five court days or seven calendar days, whichever is longer, from the date you receive this notice. If the court has not designated the caregiver as a prospective adoptive parent, you must complete form JV-321, Request for Prospective Adoptive Parent Designation, and file it with form JV-324.*

CHILD'S NAME:	CASE NUMBER:
---------------	--------------

Proof of Notice

- ④ Notice of the time and place of the Emergency Removal was given to:
- a. ☐ The court (*name of court employee who was notified*): _____
- (1) ☐ Orally, in person, on (*date*): _____ at (*time*): _____
- (2) ☐ Orally, by telephone, on (*date*): _____ at (*time*): _____
- Telephone number: _____
- b. ☐ The caregiver (*name*): _____
- (1) ☐ Orally, in person, on (*date*): _____ at (*time*): _____
- (2) ☐ Orally, by telephone, on (*date*): _____ at (*time*): _____
- Telephone number: _____ ☐ confidential telephone number in court file
- c. ☐ The child's attorney (*name*): _____
- (1) ☐ Orally, in person, on (*date*): _____ at (*time*): _____
- (2) ☐ Orally, by telephone, on (*date*): _____ at (*time*): _____
- Telephone number: _____
- d. ☐ Child 10 year of age or older (*name*): _____
- (1) ☐ Orally, in person, on (*date*): _____ at (*time*): _____
- (2) ☐ Orally, by telephone, on (*date*): _____ at (*time*): _____
- Telephone number: _____ ☐ confidential telephone number in court file
- e. ☐ The child's identified Indian tribe (*name*): _____
- (1) ☐ Orally, in person, on (*date*): _____ at (*time*): _____
- (2) ☐ Orally, by telephone, on (*date*): _____ at (*time*): _____
- Telephone number: _____
- f. ☐ The child's Court Appointed Special Advocate (CASA) local program: _____
- (1) ☐ Orally, in person, on (*date*): _____ at (*time*): _____
- (2) ☐ Orally, by telephone, on (*date*): _____ at (*time*): _____
- Telephone number: _____

- ⑤ At the time of the notice I was at least 18 years of age and not a party to this matter. I am a resident of or employed in the county where the mailing occurred. My residence or business address is (*specify*): _____

I declare under penalty of perjury under the laws of the State of California that the information in items 4 and 5 is true and correct, which means if I lie on this form, I am committing a crime.

Date: _____

Type or print your name



Sign your name

After filling out this form, bring it to the clerk of the court. If you want to keep your address or telephone number confidential, fill out form JV-327, Confidential Information (Prospective Adoptive Parent), and do not write the address or telephone number on this form.

Clerk stamps date here when form is filed.

DRAFT 21
12/15/05 xyz
Not approved by the
Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth.

Child's name:

Date of birth:

Clerk fills in case number when form is filed.

Case Number:

- ① Information about the person or persons you want to be Prospective Adoptive Parents:
- a. Name: _____
- b. Name: _____
- c. Address: _____
- d. Phone number: _____
- ② If the person asking for this Prospective Adoptive Parent designation is not the person in ①, fill out below.
- a. My name: _____
- b. I am the ☐ child ☐ child's attorney ☐ other
- c. My address: _____
- d. My phone number: _____
- ③ If the child's attorney is not the person in ②, fill out below.
- a. Child's attorney's name: _____
- b. Child's attorney's telephone number: _____
- ④ ☐ The child is 10 years of age or older. Child's telephone number: _____
- ⑤ The child lived with the caregiver or caregivers from:
- (date): _____ to (date): _____
- and from (date): _____ to (date): _____
- ⑥ Date of 366.26 hearing: _____
- If 366.26 hearing has not been held, it is too early to fill out this form. You must wait until the 366.26 hearing to request Prospective Adoptive Parent Designation.*

CHILD'S NAME:	CASE NUMBER:
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- 7 The caregiver or caregivers have:
- a. ☐ Applied for an adoptive home study
 - b. ☐ Cooperated with an adoptive home study
 - c. ☐ Signed an adoptive placement agreement
 - d. ☐ Requested de facto parent status
 - e. ☐ Been designated by the juvenile court or the licensed adoption agency as the adoptive family
 - f. ☐ Discussed a postadoption contact agreement with the social worker, child's attorney, child's Court Appointed Special Advocate (CASA) volunteer, adoption agency, or court
 - g. ☐ Worked to overcome any impediments that have been identified by the California Department of Social Services and the licensed adoption agency
 - h. ☐ Attended any of the classes required of prospective adoptive parents
 - i. ☐ Taken other steps toward adopting the child (*explain*): _____

- If you need more space, attach a sheet of paper and write "JV-321" at the top. Number of pages attached:*

8 I declare under penalty of perjury under the laws of the State of California that the information in items 1 through 7 is true and correct, which means if I lie on this form, I am committing a crime.

Date: _____

Type or print your name

▶

Sign your name

**DRAFT 15
12/15/05 xyz
Not approved by
the Judicial Council**

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth.

Child's name:

Date of birth:

Clerk fills in case number when form is filed.

Case Number:

- ① This order was made:
- ☐ On the court's own motion
 - ☐ At the request of
(name): _____
(relationship to the child): _____
 - ☐ The request was made:
 - ☐ Orally at the hearing held on (date): _____
 - ☐ In writing by filing the form JV-321, *Request for Prospective Adoptive Parent Designation*

The court finds and orders:

- ② ☐ The child's current caregiver
(name): _____
(name): _____
is designated as the child's prospective adoptive parent or parents
because:
- The child has lived with the caregiver for at least six months
 - The caregiver currently expresses a commitment to adopting the child *and*
 - The caregiver has taken at least one step to facilitate the adoption

- ③ ☐ The child's current caregiver
(name): _____
(name): _____
does not qualify as the prospective adoptive parent or parents of the child, and the request for designation as the prospective adoptive parent or parents is denied, because:
- ☐ The child has not lived with the caregiver for at least six months
 - ☐ The caregiver does not currently express a commitment to adopting the child
 - ☐ The caregiver has not taken any steps to facilitate the adoption
 - ☐ Before the request for designation, the court made a finding that the caregiver abused, neglected, or otherwise acted to the detriment of the child

- ④ ☐ It appears to the court that the request for designation as a prospective adoptive parent will be contested or the court wants to receive further evidence on the request, and a hearing on the request is ordered.
The hearing will be on (date): _____ at (time): _____ ☐ a.m. ☐ p.m.
in department _____ of the superior court located at: _____

Date: _____



Judge or Judicial Officer



CHILD'S NAME:	CASE NUMBER:
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Proof of Notice

- 5 If the Request for Prospective Adoptive Parent Designation was made at the same time as the Objection to Removal, service of notice must be oral.

Notice of the Request for Prospective Adoptive Parent Designation was given to:

- a. ☐ The adoption agency (*name of agency employee notified*): _____
- (1) ☐ Orally, in person, on (*date*): _____ at (*time*): _____
- (2) ☐ Orally, by telephone, on (*date*): _____ at (*time*): _____
- Telephone number: _____
- b. ☐ The caregiver (*name*): _____
- (1) ☐ Orally, in person, on (*date*): _____ at (*time*): _____
- (2) ☐ Orally, by telephone, on (*date*): _____ at (*time*): _____
- ☐ I called this number: _____ or ☐ I used the confidential telephone number in the court file
- c. ☐ The child's attorney (*name*): _____
- (1) ☐ Orally, in person, on (*date*): _____ at (*time*): _____
- (2) ☐ Orally, by telephone, on (*date*): _____ at (*time*): _____
- Telephone number: _____
- d. ☐ The child, if 10 years of age or older (*name*): _____
- (1) ☐ Orally, in person, on (*date*): _____ at (*time*): _____
- (2) ☐ Orally, by telephone, on (*date*): _____ at (*time*): _____
- ☐ I called this number: _____ or ☐ I used the confidential telephone number in the court file

- 6 At the time of the notice I was at least 18 years of age and not a party to this matter. I am a resident of or employed in the county where the mailing occurred. My residence or business address is (*specify*):

I declare under penalty of perjury under the laws of the State of California that the information in items 5 and 6 is true and correct, which means if I lie on this form, I am committing a crime.

Date: _____

Type or print your name



Sign your name



CHILD'S NAME:	CASE NUMBER:
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- 7 If the Request for Prospective Adoptive Parent Designation was made before a Request for Removal was filed or before an emergency removal occurred, service of notice must be by first-class mail.

Notice of the Request for Prospective Adoptive Parent Designation was mailed on (date): _____

by placing copies in a sealed envelope and depositing the envelope ☐ directly in the United States mail with postage paid or ☐ at my place of business for same-day collection and mailing with the United States mail, following our ordinary business practices with which I am readily familiar.

a. Place of deposit (city and state): _____

b. Addressed as follows:

(1) Agency: _____

(2) Caregiver: _____

(3) Child's attorney: _____

(4) Child, if 10 years of age or older: _____

- 8 At the time of the notice I was at least 18 years of age and not a party to this matter. I am a resident of or employed in the county where the mailing occurred. My residence or business address is (specify):

I declare under penalty of perjury under the laws of the State of California that the information in item 7 and item 8 is true and correct, which means if I lie on this form, I am committing a crime.

Date: _____

Type or print your name



Sign your name

Request to Remove Child and Proof of Notice

Clerk stamps date here when form is filed.

This notice must be served with a blank copy of form JV-324, Objection to Removal, Notice of Hearing Date, and Proof of Notice, and form JV-321, Request for Prospective Adoptive Parent Designation.

DRAFT 21
12/15/05 xyz
Not approved by the
Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth.

Child's name:

Date of birth:

Clerk fills in case number when form is filed.

Case Number:

1 To:

Court: _____

Designated prospective adoptive parent or caregiver who may fit the definition of prospective adoptive parent (*name*):

Child's attorney (*name*): _____

Child, if 10 years of age or older (*name*): _____

2) Agency proposing move (*name*): _____

This agency is asking for a court order to remove *(name of child)*:_____

from his or her current home because (*explain*):

If more space is needed, attach a sheet of paper and write "JV-323" at the top. Number of pages attached:

3 If you do not agree with the removal, you may request a court hearing by filling out form JV-324, Objection to Removal, Notice of Hearing Date, and Proof of Notice. *You must fill out form JV-324 and file it with the court within five court days or seven calendar days, whichever is longer, from the date you received this notice. If the court has not designated you as a prospective adoptive parent, you must complete form JV-321, Request for Prospective Adoptive Parent Designation, and file it with form JV-324.*

Date:

Type or print your name

Sign you name

CHILD'S NAME:	CASE NUMBER:
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④ Notice of the Request to Remove Child was mailed on *(date)*: _____

By placing copies in a sealed envelope and depositing the envelope ☐ directly in the United States mail with postage paid or ☐ at my place of business for same-day collection and mailing with the United States mail, following our ordinary business practices with which I am readily familiar.

a. Place of deposit *(city and state)*: _____

b. Addressed as follows:

(1) Court: _____

(2) Caregiver: _____

_____ or ☐ confidential address in court file

(3) Child's attorney: _____

(4) Child, if 10 years of age or older: _____

_____ or ☐ confidential address in court file

(5) Child's identified Indian tribe, if applicable: _____

(6) Child's Court Appointed Special Advocate (CASA) local program, if applicable: _____

⑤ At the time of the notice I was at least 18 years of age and not a party to this matter. I am a resident of or employed in the county where the mailing occurred. My residence or business address is *(specify)*:

I declare under penalty of perjury under the laws of the State of California that the information in items 4 and 5 is true and correct, which means if I lie on this form, I am committing a crime.

Date: _____

Type or print your name



Sign your name

Fill out page one of this form. Bring both pages 1 and 2 of this form to the clerk of the court. If you want to keep your address or telephone number confidential, fill out form JV-327, Confidential Information (Prospective Adoptive Parent), and do not write the address or telephone number on this form.

If you are a caregiver or child, the clerk of the court will set a hearing date and let you know what it is.

If you are the child's attorney, you must provide notice of the hearing.

1 Information about the person or persons objecting to the removal:

- a. Name: _____
 b. Name: _____
 c. Phone number: _____

2 If you (the person objecting to the removal) are not the caregiver, fill out below.

- a. My name: _____
 b. I am the ☐ child ☐ child's attorney ☐ other
 c. My phone number: _____

3 If you are not the child's attorney, fill out below.

- a. Child's attorney's name: _____
 b. Child's attorney's telephone number: _____

4 ☐ The child is 10 years of age or older. Child's telephone number: _____

5 ☐ The child has an identified Indian tribe (specify tribe): _____
 Telephone number: _____

6 ☐ The child has a Court Appointed Special Advocate (CASA). Telephone number of local CASA program: _____

7 ☐ The caregiver has been designated by the judge as the child's prospective adoptive parent or parents.

8 ☐ The caregiver may meet the definition of prospective adoptive parent or parents and a form JV-321, *Request for Prospective Adoptive Parent Designation* will be filed with this objection and request for hearing.

9 The social worker should not remove the child from the caregiver's home because:

If you need more space, attach a sheet of paper and write "JV-324" at the top. Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the information on this form is true and correct, which means if I lie on this form, I am committing a crime.

Date: _____

 Type or print your name

 Sign your name

Clerk stamps date here when form is filed.

**DRAFT 20
 12/15/05 xyz
 Not approved by the
 Judicial Council**

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth.

Child's name:

Date of birth:

Clerk fills in case number when form is filed.

Case Number:

CHILD'S NAME: _____	CASE NUMBER: _____
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Hearing Date

- 10** The hearing on removal will be on *(date)*: _____ at *(time)*: _____ ☐ a.m. ☐ p.m.
 in department _____ of the superior court at *(address)*: _____

Proof of Notice

- 11** Notice of the time and place of the hearing on removal was given to:
- a. ☐ The adoption agency *(name of agency employee notified)*: _____
 - (1) ☐ Orally, in person, on *(date)*: _____ at *(time)*: _____
 - (2) ☐ Orally, by telephone, on *(date)*: _____ at *(time)*: _____
 Telephone number: _____
 - b. ☐ The caregiver *(name)*: _____
 - (1) ☐ Orally, in person, on *(date)*: _____ at *(time)*: _____
 - (2) ☐ Orally, by telephone, on *(date)*: _____ at *(time)*: _____
 Telephone number: _____ ☐ confidential telephone number in court file
 - c. ☐ The child's attorney *(name)*: _____
 - (1) ☐ Orally, in person, on *(date)*: _____ at *(time)*: _____
 - (2) ☐ Orally, by telephone, on *(date)*: _____ at *(time)*: _____
 Telephone number: _____
 - d. ☐ The child, if 10 years of age or older *(name)*: _____
 - (1) ☐ Orally, in person, on *(date)*: _____ at *(time)*: _____
 - (2) ☐ Orally, by telephone, on *(date)*: _____ at *(time)*: _____
 Telephone number: _____ ☐ confidential telephone number in court file
 - e. ☐ Child's identified Indian tribe: _____
 - (1) ☐ Orally, in person, on *(date)*: _____ at *(time)*: _____
 - (2) ☐ Orally, by telephone, on *(date)*: _____ at *(time)*: _____
 Telephone number: _____
 - f. ☐ Child's Court Appointed Special Advocate (CASA) local program: _____
 - (1) ☐ Orally, in person, on *(date)*: _____ at *(time)*: _____
 - (2) ☐ Orally, by telephone, on *(date)*: _____ at *(time)*: _____
 Telephone number: _____

- 11** At the time of the notice I was at least 18 years of age and not a party to this matter. I am a resident of or employed in the county where the mailing occurred. My residence or business address is *(specify)*: _____

I declare under penalty of perjury under the laws of the State of California that the information in items 11 and item 12 is true and correct, which means if I lie on this form, I am committing a crime.

Date: _____

Type or print your name

▶

Sign your name

Clerk stamps date here when form is filed.

DRAFT 7
12/15/05 xyz
Not approved by
the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth.

Child's name:

Clerk fills in case number when form is filed.

Case Number:

① This hearing on the child's removal from the home of the prospective adoptive parent or parents took place on (date): _____

② The child's prospective adoptive parent or parents are:
 (name): _____
 (name): _____

The court finds and orders:

③ ☐ The requested removal is not in the best interest of the child. The child will remain in the home of the prospective adoptive parents.

④ ☐ The requested removal is in the best interest of the child. The child is ordered removed from the home of the prospective adoptive parent or parents, and their designation as prospective adoptive parents is terminated. The agency may place the child with (name): _____

⑤ ☐ Other orders (specify): _____

Date: _____

_____
Judge or Judicial Officer

This information must be kept under seal in the court file. The court and the child's attorney may look at this information.

① Caregiver (*name*): _____

Caregiver's telephone number: _____

Caregiver's address: _____

② Child (*name*): _____

Child's telephone number: _____

Child's address: _____

Clerk stamps date here when form is filed.

DRAFT 5
12/15/05 xyz
Not approved by
the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth.

Child's name:

Clerk fills in case number when form is filed.

Case Number:

Senate Bill No. 218

CHAPTER 626

An act to amend Section 366.26 of the Welfare and Institutions Code, relating to termination of parental rights.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

SB 218, Scott. Termination of parental rights: prospective adoptive parents.

Existing law provides that if the court, by order or judgment, declares a child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. Existing law provides that the State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted.

This bill would create an exception to that provision if the child is living with a caretaker who has been designated by the court as a prospective adoptive parent. The bill would authorize a court to designate a current caretaker as a prospective adoptive parent if the child has lived with the caretaker for at least 6 months, the caretaker has expressed a commitment to adopt the child, and the caretaker has taken at least one step to facilitate the adoption, as specified. The bill would further provide that a child living in the home of a designated prospective adoptive parent may only be removed from that home after a noticed hearing in which the court finds that removal from the home is in the child's best interest, except as specified. The bill would require the Judicial Council to prepare forms to facilitate the filing of petitions under these provisions.

The bill would incorporate additional changes in Section 366.26 of the Welfare and Institutions Code, proposed by AB 519, AB 1338, and AB 1412, to be operative only if one or more of those bills and this bill are chaptered and become effective on or before January 1, 2006, and this bill is chaptered last.

The people of the State of California do enact as follows:

SECTION 1. Section 366.26 of the Welfare and Institutions Code is amended to read:

by publication or otherwise as provided in this chapter. After making the order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(j) If the court, by order or judgment, declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, a petition for adoption may not be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted, except as specified in subdivision (n). With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(l) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following applies:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a

petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

(n) (1) Notwithstanding Section 8704 of the Family Code or any other provision of law, the court, at a hearing held pursuant to this section or anytime thereafter, may designate a current caretaker as a prospective adoptive parent if the child has lived with the caretaker for at least six months, the caretaker currently expresses a commitment to adopt the child, and the caretaker has taken at least one step to facilitate the adoption process. In determining whether to make that designation, the court may take into consideration whether the caretaker is listed in the preliminary assessment prepared by the county department in accordance with subdivision (i) of Section 366.21 as an appropriate person to be considered as an adoptive parent for the child and the recommendation of the State Department of Social Services or licensed adoption agency.

(2) For purposes of this subdivision, steps to facilitate the adoption process include, but are not limited to, the following:

(A) Applying for an adoption homestudy.

(B) Cooperating with an adoption homestudy.

(C) Being designated by the court or the licensed adoption agency as the adoptive family.

(D) Requesting de facto parent status.

(E) Signing an adoptive placement agreement.

(F) Engaging in discussions regarding a postadoption contact agreement.

(G) Working to overcome any impediments that have been identified by the State Department of Social Services and the licensed adoption agency.

(H) Attending classes required of prospective adoptive parents.

(3) Prior to a change in placement and as soon as possible after a decision is made to remove a child from the home of a designated prospective adoptive parent, the agency shall notify the court, the designated prospective adoptive parent or the current caretaker, if that caretaker would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of this notice, the child's attorney, and the child, if the child is 10 years of age or older, of the proposal in the manner described in Section 16010.6.

(A) Within five court days or seven calendar days, whichever is longer, of the date of notification, the child, the child's attorney, or the designated prospective adoptive parent may file a petition with the court objecting to the proposal to remove the child, or the court, upon its own motion, may set a hearing regarding the proposal. The court may, for good cause, extend the filing period. A caretaker who would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of the notice of proposed removal of the child may file, together with the petition under this subparagraph, a petition for an order designating the caretaker as a prospective adoptive parent for purposes of this subdivision.

(B) A hearing ordered pursuant to this paragraph shall be held as soon as possible and not later than five court days after the petition is filed with the court or the court sets a hearing upon its own motion, unless the court for good cause is unable to set the matter for hearing five court days after the petition is filed, in which case the court shall set the matter for hearing as soon as possible. At the hearing, the court shall determine whether the caretaker has met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1), and whether the proposed removal of the child from the home of the designated prospective adoptive parent is in the child's best interest, and the child may not be removed from the home of the designated prospective adoptive parent unless the court finds that removal is in the child's best interest. If the court determines that the caretaker did not meet the threshold criteria to be designated as a prospective adoptive parent on the date of service of the notice of proposed removal of the child, the petition objecting to the proposed removal filed by the caretaker shall be dismissed. If the caretaker was designated as a prospective adoptive parent prior to this hearing, the court shall inquire into any progress made by the caretaker towards the adoption of the child since the caretaker was designated as a prospective adoptive parent.

(C) A determination by the court that the caretaker is a designated prospective adoptive parent pursuant to paragraph (1) or subparagraph (B) does not make the caretaker a party to the dependency proceeding nor does it confer on the caretaker any standing to object to any other action of the department or licensed adoption agency, unless the caretaker has been

declared a de facto parent by the court prior to the notice of removal served pursuant to paragraph (3).

(D) If a petition objecting to the proposal to remove the child is not filed, and the court, upon its own motion, does not set a hearing, the child may be removed from the home of the designated prospective adoptive parent without a hearing.

(4) Notwithstanding paragraph (3), if the State Department of Social Services or a licensed adoption agency determines that the child must be removed from the home of the caretaker who is or may be a designated prospective adoptive parent immediately, due to a risk of physical or emotional harm, the agency may remove the child from that home and is not required to provide notice prior to the removal. However, as soon as possible and not longer than two court days after the removal, the agency shall notify the court, the caretaker who is or may be a designated prospective adoptive parent, the child's attorney, and the child, if the child is 10 years of age or older, of the removal. Within five court days or seven calendar days, whichever is longer, of the date of notification of the removal, the child, the child's attorney, or the caretaker who is or may be a designated prospective adoptive parent may petition for, or the court on its own motion may set, a noticed hearing pursuant to paragraph (3). The court may, for good cause, extend the filing period.

(5) Except as provided in subdivision (b) of Section 366.28, an order by the court issued after a hearing pursuant to this subdivision shall not be appealable.

(6) Nothing in this section shall preclude a county child protective services agency from fully investigating and responding to alleged abuse or neglect of a child pursuant to Section 11165.5 of the Penal Code.

(7) The Judicial Council shall prepare forms to facilitate the filing of the petitions described in this subdivision, which shall become effective on January 1, 2006.

SECTION 1.1. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

16010.6. (a) As soon as possible after a placing agency makes a decision with respect to a placement or a change in placement of a dependent child, the placing agency shall notify the child's attorney and provide to the child's attorney information regarding the child's address, telephone number, and caregiver. This requirement is declaratory of existing law.

(b) The Judicial Council shall adopt a rule of court directing the attorney for a child for whom a dependency petition has been filed, upon receipt from the agency responsible for placing the child of the name, address, and telephone number of the child's caregiver, to timely provide the attorney's contact information to the caregiver and, if the child is 10 years of age or older, to the child. This rule does not preclude an attorney from giving contact information to a child who is younger than 10 years of age.